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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,275	07/08/2003	Wci-Wu He	PF219D1	7739

22195 7590 05/15/2006

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EXAMINER

MACIAS, CHANDA L

ART UNIT	PAPER NUMBER
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1643

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,275

Applicant(s)

HE ET AL.

Examiner

Chanda L. Macias

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-62 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed December 8, 2003 is acknowledged and has been entered.
2. Claims 1-62 are pending in the application and are currently subject to restriction.

Election/Restrictions

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-62, insofar as the claims are drawn to an isolated polypeptide comprising an amino acid sequence that is at least 95% identical to SEQ ID NO:2 or fragment thereof, a fusion polypeptide comprising SEQ ID NO: 2 or a fragment thereof and a heterologous amino acid sequence, and a composition of said polypeptide or fusion polypeptide, classified, for example, in class 530, subclass 300.

Group II. Claims 1-62, insofar as the claims are drawn to an isolated polypeptide comprising an amino acid sequence that is at least 95% identical to SEQ ID NO:4 or fragment thereof, a fusion polypeptide comprising SEQ ID NO: 4 or a fragment thereof and a heterologous amino acid sequence, and a composition of said polypeptide or fusion polypeptide, classified, for example, in class 530, subclass 300.

4. The inventions of Groups I and II are patentably distinct for the following reasons:
The inventions of Group I are isolated polypeptides comprising SEQ ID NO:2 or fragment thereof, whereas the inventions of Groups II are isolated polypeptides comprising SEQ ID NO:4 or fragment thereof.

The inventions of Group I and the inventions of Group II are patentably distinct because, although both are polypeptides, the inventions of Group I are isolated polypeptides comprising SEQ ID NO: 2 or a fragment thereof, whereas the inventions of Group II are isolated polypeptides comprising SEQ ID NO: 4 or a fragment thereof. Polypeptides are composed of polymers of amino acids. Each of the different polypeptides is structurally and/or functionally distinct because each comprises a uniquely different amino acid sequence. Moreover, each different protein is expected to have a different function or role, or to be expressed by different cells, or subsets of cells.

Because the inventions of Groups I and II are distinct for these reasons, the search required to examine claims directed to any one of these inventions is not the same, nor is it coextensive with the search required to examine claims directed to any other. Because different searches would have to be performed to examine claims directed to the inventions of Groups I and II, an examination of both would constitute a serious burden.

Since the inventions of Groups I and II have been shown to be patentably distinct, and because the examination of both inventions could not be made without serious burden, it is proper to restrict each from the other. See MPEP § 803.

5. Because these inventions are distinct for the reasons given above and also because the search required for any one group is not required for any other group and/or the inventions have acquired a separate status in the art as shown by their different classification or their recognized divergent subject matter, searching more than one invention encompassed by the claim would constitute a serious burden; therefore, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103(a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Macias, Ph.D. whose telephone number is (571) 272-9032. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

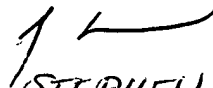
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chanda L. Macias, Ph.D.
Examiner
Art Unit 1643

clm
April 24, 2006


STEPHEN RAWLINGS
PRIMARY EXAMINER
ART UNIT 1643